

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #11	CCRB Case #: 201804969	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/19/2018 11:50 AM	Location of Incident: East 125th Street and Lexington Avenue	Precinct: 25	18 Mo. SOL 12/19/2019	EO SOL 12/19/2019	
Date/Time CV Reported Wed, 06/20/2018 5:53 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/20/2018 5:53 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Tenzin Penpa	00730	963688	025 PCT
2. POM Jerelme Herasme	00710	961812	025 PCT
3. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Luis Perez	08681	937269	026 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jerelme Herasme	Abuse: Police Officer Jerelme Herasme stopped § 87(2)(b)	
B.POM Tenzin Penpa	Force: Police Officer Tenzin Penpa used physical force against § 87(2)(b)	
C.POM Tenzin Penpa	Force: Police Officer Tenzin Penpa restricted § 87(2)(b)'s breathing.	
D. An officer	Abuse: An officer threatened to arrest § 87(2)(b)	
E. An officer	Abuse: An officer threatened to remove § 87(2)(b) to the hospital.	

Case Summary

On June 20, 2018, § 87(2)(b) filed this complaint on the CCRB website.

On June 19, 2018, at approximately 11:50 a.m., § 87(2)(b) was sitting at a bus stop in the vicinity of East 125th Street and Lexington Avenue in Manhattan when PO Jerelme Herasme and PO Tenzin Penpa of the 25th Precinct arrived in a marked vehicle. PO Herasme allegedly saw § 87(2)(b) engaging in activity he thought to be criminal, exited his vehicle, and began speaking to him (**Allegation A -Abuse of Authority: Stop,** § 87(2)(g) § 87(2)(b) stood, intending to walk away, asked whether he was under arrest, and was told that he was not.

PO Penpa grabbed hold of § 87(2)(b) and allegedly conducted a forcible takedown against him (**Allegation B -Force: Physical force,** § 87(2)(g) While § 87(2)(b) was on the ground, PO Penpa allegedly pressed part of his body onto his torso, causing him to experience difficulty breathing (**Allegation C -Force: Restricted breathing,** § 87(2)(g) An unidentified uniformed officer from the 26th Precinct arrived and spoke with § 87(2)(b) allegedly informing him that he could either be arrested (**Allegation D -Abuse of Authority: Threat of arrest,** § 87(2)(g)) or be transported to a hospital (**Allegation E -Abuse of Authority: Threat regarding removal to hospital,** § 87(2)(g)). § 87(2)(b) became calm, and officers asked if he could leave the location by his own power, which he affirmed. § 87(2)(b) was released without being issued a summons or arrested.

No video footage was recovered in this case.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jerelme Herasme stopped § 87(2)(b)

§ 87(2)(b) stated (Board Review 01) that he walked to a bus stop on the south side of East 125th Street and Lexington Avenue in Manhattan and had not consumed any alcohol or used any narcotics prior to this. Due to the hot weather, § 87(2)(b) chose to sit under the bus stop's awning, where two unidentified female civilians sat. § 87(2)(b) did not interact with them. After approximately three to four minutes, during which time § 87(2)(b) did nothing but sit, PO Herasme and PO Penpa approached § 87(2)(b) in their vehicle. The females informed § 87(2)(b) that the officers were "coming [his] way" but did not explain why they thought this. The officers' vehicle stopped approximately ten feet from § 87(2)(b) and the officers exited it. PO Penpa instructed § 87(2)(b) to "come over to" the officers. § 87(2)(b) asked him whether he was under arrest and walked away.

PO Herasme stated (Board Review 02) that his assignment on the incident date was the 125th Street Task Force, an assignment that targeted drugs and homeless activity in the area and to which he had been assigned for approximately six months at the time of the incident. During that time, PO Herasme conducted approximately 25 to 30 arrests related to the drug "K2" and was involved in such arrests a total of approximately 100 times.

PO Herasme drove eastbound on East 125th Street and, on the southeast corner of Lexington Avenue and East 125th Street, saw an individual, § 87(2)(b) sitting approximately five to ten feet away at a bus stop and holding a white piece of paper approximately two to four inches in length, which PO Herasme recognized to be the type of material into which individuals rolled narcotics. PO Herasme was not familiar with § 87(2)(b) who moved his thumb and forefinger in a "rolling" motion. PO Herasme saw a "green, vegetative" substance that he thought to be K2 inside the paper § 87(2)(b) held. PO Herasme

thought that this was K2 because the substance resembled marijuana or oregano but was more “spread out” and because the area was known for drug activity. PO Herasme told PO Penpa, “He’s rolling K2.”

During his CCRB interview, PO Herasme was asked, “The substance that you saw § 87(2)(b) rolling in the paper initially: was there anything about it, in your experience, that led you to believe that it wasn’t...” PO Herasme interjected, “That it wasn’t?” The question was continued, “Tobacco or some other innocuous substance?” PO Herasme replied, “No.” PO Penpa asked § 87(2)(b) what he was doing. § 87(2)(b) threw what he was holding into the air. The contents separated from the paper, and the officers did not recover it.

PO Penpa stated (Board Review 03) that he approached § 87(2)(b) because the officers drove near him and PO Herasme said, “He’s rolling K2. Let’s hop out.” PO Penpa was not familiar with § 87(2)(b) at the time of the incident but was later informed by other officers within his command that § 87(2)(b) was known by officers to be a homeless drug user. PO Herasme did not provide such information to PO Penpa during the incident.

§ 87(2)(b), § 87(2)(g)

Allegation (B) Force: Police Officer Tenzin Penpa used physical force against § 87(2)(b)

Allegation (C) Force: Police Officer Tenzin Penpa restricted § 87(2)(b) s breathing.

§ 87(2)(b) stated that after PO Penpa and PO Herasme exited their vehicle, they walked towards him, and PO Penpa grabbed hold of one of his arms and attempted to turn it behind his back. One of § 87(2)(b) s wrists was handcuffed. PO Penpa held both of § 87(2)(b) s upper arms and pushed him forward, causing him to strike a wall that had been approximately five feet from him. PO Penpa then “tackled” § 87(2)(b) in that he held his body and moved forward, causing § 87(2)(b) to strike the ground, face-down. § 87(2)(b) later noticed a heel laceration that he had sustained and which he attributed to this action. No documentation of treatment for this injury was obtained due to § 87(2)(b) s refusal to sign HIPAA authorizations.

As § 87(2)(b) lay on the ground, he saw PO Herasme to his side, holding § 87(2)(b) s outstretched arm. § 87(2)(b) felt pressure he thought to be the result of PO Penpa pressing his knee between his shoulder blades. This pressure was applied for approximately 30 seconds and restricted § 87(2)(b) s ability to breathe freely, which he told the officers, who did not respond.

PO Penpa stated that when he approached § 87(2)(b) “hopped up” and ran towards a wall less than one vehicle length away. PO Penpa and PO Herasme attempted to handcuff him, and he pulled his arms away from them and did not resist in any other way. An additional officer with whom PO Penpa was not familiar assisted in this process. PO Penpa “slowly” brought § 87(2)(b) to the ground in a manner he was unable to describe to the

CCRB; PO Penpa stated that it was “easier” to handcuff § 87(2)(b) if he was on the ground. Officers moved § 87(2)(b) to the ground, and this process was “hard” in a manner PO Penpa could not describe further. PO Penpa did not recall whether he placed his knee or any part of his body on § 87(2)(b)’s back, including between his shoulder blades, or saw any officer do so. PO Penpa did not recall § 87(2)(b) complaining of being unable to breathe.

PO Herasme stated that after § 87(2)(b) threw something into the air, he screamed for help. PO Herasme thought that his demeanor and nothing else suggested that he was intoxicated. PO Herasme attempted to handcuff § 87(2)(b) who flailed his arms, twisted his torso, “nudged” his head towards PO Herasme’s chest, and resisted in no other way. After approximately 15 to 20 seconds, the two officers and § 87(2)(b) all moved to the ground in what PO Herasme thought was an unintentional motion. While § 87(2)(b) was on the ground, PO Herasme did not recall seeing PO Penpa place his knee or any part of his body on § 87(2)(b)’s back or between his shoulder blades. PO Herasme did not recall hearing § 87(2)(b) complain of being unable to breathe.

§ 87(2)(b), § 87(2)(g)

Allegation (D) Abuse of Authority: An officer threatened to arrest § 87(2)(b)

Allegation (E) Abuse of Authority: An officer threatened to remove § 87(2)(b) to the hospital.

§ 87(2)(b) stated that an officer, an approximately 5’9” tall white male with a stocky build, hair in a balding pattern, and a uniform that he thought was “tactical” in nature, approached him, PO Herasme, and PO Penpa. This officer instructed PO Herasme and PO Penpa to transport § 87(2)(b) to a hospital as an Emotionally Disturbed Person (EDP). The officer informed § 87(2)(b) that he could be arrested or be transported to a hospital and did not provide any reason for which he could be arrested.

PO Herasme stated that one officer with whom he was not familiar assisted in this incident. He described this officer as a Hispanic male with a bald, shaven head and stated that the officer had exited a NYS Department of Motor Vehicles building, indicating to him that he had been at Traffic Court. PO Herasme stated that the “collar brass” on this officer’s uniform indicated that he was from the 26th Precinct.

The 26th Precinct Roll Call for the incident date indicated that PO Perez was listed under Exceptions with the notation “AAB CASES,” which SPAA Pichardo of the 26th Precinct Roll Call stated refers to Traffic Court. Review of PO Luis Perez’s MOS photograph and pedigree information indicated that he is a Hispanic male with a completely bald head.

PO Perez was interviewed at the CCRB. He stated (Board Review 04) that he did not recall this incident whatsoever and had exited Traffic Court at the incident location at approximately 12:00 p.m.

Although PO Perez’s pedigree information and assignment indicated that he was the most likely subject officer in Allegations D and E, he denied being familiar with this incident, and his MOS photograph and pedigree information were not consistent with the physical description § 87(2)(b) provided for this subject officer in that PO Perez is Hispanic male with a completely

bald head and § 87(2)(b) described a white male who was not bald and wore a “tactical” uniform. A photo array including the MOS photograph of PO Perez could not be conducted with § 87(2)(b) because he refused to cooperate with the investigation in any capacity after his interview. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 05).
- PO Herasme has been a member-of-service for two years, and this is the first CCRB complaint to which he has been a subject.
- PO Penpa has been a member-of-service for one year, and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- On July 6, 2018, this case was sent to mediation, and on September 19, 2018, the case was returned to investigation because § 87(2)(b) withdrew his desire to mediate the complaint.
- On February 25, 2019, a Notice of Claim was sent to the Office of the New York City Comptroller, and the results will be added to the case file upon receipt (Board Review 06).

• § 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date